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[Request for GAO Views on Validity of BLM Payment Deductions]

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Date: 1984-08-28

B-214267, AUG 28, 1984

TAXES - FEDERAL PAYMENTS IN LIEU OF TAXES - TO UNITS OF LOCAL GOVERNMENT - DEDUCTION PROPRIETY DIGEST: 1. PAYMENTS RECEIVED BY UNITS OF GENERAL LOCAL GOVERNMENT UNDER PAYMENTS IN LIEU OF TAXES ACT OF 1976 (PILT), ARE REQUIRED TO BE REDUCED BY AMOUNTS RECEIVED BY UNITS UNDER PAYMENT LAWS SPECIFIED IN PILT, 31 U.S.C. SECS. 6903(A) AND (B). FACT THAT PAYMENT LAW REVENUES ARE PAID INITIALLY TO STATE, AND FURTHER DISBURSED TO COUNTY IN ACCORDANCE WITH STATE LAW, DOES NOT TRANSFORM FUNDS INTO STATE REVENUES EXEMPT FROM DEDUCTION REQUIREMENTS OF PILT. REVENUES ARE CONSIDERED TO BELONG TO UNIT IN STATE THAT EVENTUALLY GETS TO USE THEM TO MEET OWN RESPONSIBILITIES. TAXES - FEDERAL PAYMENTS IN LIEU OF TAXES - TO UNITS OF LOCAL GOVERNMENT - DEDUCTION PROPRIETY 2. AS LONG AS PAYMENT LAW FUNDS UNDER 31 U.S.C. SEC. 6903(A) ARE GIVEN TO COUNTY TO CARRY OUT COUNTY'S OWN RESPONSIBILITIES, FUNDS ARE SUBJECT TO DEDUCTION PROVISION OF PILT PAYMENT FORMULAE, 31 U.S.C. SEC. 6903(B), EVEN THOUGH COUNTY HAS NO DISCRETION UNDER STATE AS TO PROGRAMS FOR WHICH FUNDS MUST BE USED.

THE HONORABLE GENE CHAPPIE HOUSE OF REPRESENTATIVES:

DEAR MR. CHAPPIE:

THIS IS IN REPLY TO YOUR LETTER OF JANUARY 23, 1984, REQUESTING OUR VIEW OF THE VALIDITY OF CERTAIN DEDUCTIONS MADE BY THE BUREAU OF LAND MANAGEMENT (BLM) FROM PAYMENTS MADE TO LAKE COUNTY, CALIFORNIA (COUNTY), UNDER THE PAYMENTS IN LIEU OF TAXES ACT (PILT), 31 U.S.C. SEC. 6901 ET SEQ. YOU ALSO ENCLOSED A LETTER TO US DATED DECEMBER 20, 1983, FROM THE LAKE COUNTY BOARD OF SUPERVISORS, REQUESTING A "NEW OPINION" ON THE ABOVE SUBJECT, SINCE BLM BASED ITS ACTIONS ON OUR DECISION IN 58 COMP.GEN. 19 (1978).

IN BRIEF, THE COUNTY BELIEVES THAT ITS PILT RECEIPTS FOR FISCAL YEARS 1982 AND 1983 WERE IMPROPERLY REDUCED BY BLM TO REFLECT "CERTAIN NON- DISCRETIONARY, SPECIAL PURPOSE FUNDING FROM THE STATE OF CALIFORNIA PURSUANT TO CALIFORNIA PUBLIC RESOURCES CODE SECTIONS 3800-3825." ACCORDING TO THE COUNTY, THESE FUNDS WERE PROVIDED BY THE STATE FOR SPECIFIC PURPOSES, INCLUDING PLANNING FOR AND MITIGATING THE IMPACTS OF GEOTHERMAL DEVELOPMENT IN THE COUNTY, AND WERE NOT INTENDED TO TAKE THE PLACE OF FEDERAL PILT FUNDS. THE COUNTY HAS PRESENTED TWO ARGUMENTS IN SUPPORT OF ITS POSITION.

THE COUNTY ASSERTED IN A LETTER TO YOU DATED JULY 26, 1983, THAT THE FUNDS "ARE PROVIDED TO US BY THE STATE OF CALIFORNIA, NOT BY BLM OR ANY OTHER AGENCY OF THE FEDERAL GOVERNMENT." (ID., P. 1.) IT DOES NOT MATTER WHERE THE FUNDS ORIGINATE, ACCORDING TO THE COUNTY, "BECAUSE ONCE THE FUNDS ARE DISBURSED TO THE STATE THEY BECOME STATE FUNDS," AND SHOULD NOT BE DEDUCTED FROM THE COUNTY'S PILT RECEIPTS.

THE COUNTY'S SECOND ARGUMENT IS THAT BECAUSE THE FUNDS IT RECEIVED FROM THE STATE ARE "NON- DISCRETIONARY SPECIAL PURPOSE" FUNDS, THEY ARE NOT TO BE INCLUDED BY BLM IN ITS CALCULATIONS OF NECESSARY DEDUCTIONS FROM THE COUNTY'S PILT PAYMENTS.

WE HAVE REVIEWED THE LEGISLATIVE HISTORY OF PILT, OUR PRIOR DECISIONS CONCERNING ITS APPLICATION, THE FORMAL VIEWS OF THE DEPARTMENT OF THE INTERIOR, AND THE RELEVANT CALIFORNIA CODE PROVISIONS. WE CONCLUDE THAT THE FUNDS IN QUESTION WERE NOT STATE FUNDS, THAT THEIR STATUS AS DISCRETIONARY OR NONDISCRETIONARY IS NOT RELEVANT TO THE QUESTION OF WHETHER THEY SHOULD BE INCLUDED IN BLM'S CALCULATIONS, AND THAT BLM PROPERLY REDUCED THE COUNTY'S PILT PAYMENTS TO REFLECT THEIR RECEIPT.

BACKGROUND

THE PAYMENTS IN LIEU OF TAXES ACT OF 1976 AUTHORIZES AND DIRECTS THE SECRETARY OF THE INTERIOR TO MAKE PAYMENTS ON A FISCAL YEAR BASIS TO EACH UNIT OF GENERAL LOCAL GOVERNMENT IN WHICH CERTAIN TYPES OF FEDERAL LANDS ARE LOCATED. SECTION 2 OF PILT, 31 U.S.C. SEC. 6903(B), SETS FORTH ALTERNATIVE FORMULAE TO BE USED IN DETERMINING THE AMOUNT OF THESE PAYMENTS:

"(B)(1) A PAYMENT UNDER SECTION 6902 OF THIS TITLE IS EQUAL TO THE GREATER OF--

"(A) 75 CENTS FOR EACH ACRE OF ENTITLEMENT LAND LOCATED WITHIN A UNIT OF GENERAL LOCAL GOVERNMENT (BUT NOT MORE THAN THE LIMITATION DETERMINED UNDER SUBSECTION (C) OF THIS SECTION) REDUCED (BUT NOT BELOW 0) BY AMOUNTS THE UNIT RECEIVED IN THE PRIOR FISCAL YEAR UNDER A PAYMENT LAW; OR

"(B) 10 CENTS FOR EACH ACRE OF ENTITLEMENT LAND LOCATED IN THE UNIT (BUT NOT MORE THAN THE LIMITATION DETERMINED UNDER SUBSECTION (C) OF THIS SECTION)." (EMPHASIS SUPPLIED.)

AMONG THE PAYMENT LAWS SPECIFIED IN SECTION 6903(A) IS THE MINERAL LANDS LEASING ACT, 30 U.S.C. SEC. 191, AS AMENDED, WHICH PROVIDES IN PART THAT:

"ALL MONEY RECEIVED FROM *** RENTALS OF THE PUBLIC LANDS UNDER THE PROVISIONS OF THIS CHAPTER AND THE GEOTHERMAL STEAM ACT OF 1970 *** SHALL BE PAID INTO THE TREASURY OF THE UNITED STATES; 50 PER CENTUM THEREOF SHALL BE PAID BY THE SECRETARY OF THE TREASURY TO THE STATE OTHER THAN ALASKA WITHIN THE BOUNDARIES OF WHICH THE LEASED LANDS OR DEPOSITS ARE OR WERE LOCATED; *** TO BE USED BY SUCH STATE AND ITS SUBDIVISIONS, AS THE LEGISLATURE OF THE STATE MAY DIRECT GIVING PRIORITY TO THOSE SUBDIVISIONS OF THE STATE SOCIALLY OR ECONOMICALLY IMPACTED BY DEVELOPMENT OF MINERALS LEASED UNDER THIS CHAPTER, FOR (I) PLANNING, (II) CONSTRUCTION AND MAINTENANCE OF PUBLIC FACILITIES, AND (III) PROVISION OF PUBLIC SERVICE

RELEVANT PORTIONS OF THE CALIFORNIA PUBLIC RESOURCES CODE (CODE) ESTABLISH AN ACCOUNT FOR THE DEPOSIT AND SUBSEQUENT DISBURSEMENT OF REVENUES RECEIVED BY THE STATE UNDER 30 U.S.C. SEC. 191 WITH RESPECT TO ACTIVITIES UNDERTAKEN UNDER THE GEOTHERMAL STEAM ACT OF 1970 (30 U.S.C. SEC. 1001 ET SEQ.), CODE, SECTIONS 3820, 3821, AND ENUMERATE THE PURPOSES FOR WHICH COUNTIES SHALL EXPEND THEIR SHARES OF DISBURSED REVENUES, CODE, SECTION 3823. SECTION 3823 CONTAINS LISTS OF ACTIVITIES RELATED TO THE PLANNING FOR AND MITIGATION OF THE EFFECTS OF GEOTHERMAL STEAM RESOURCE DEVELOPMENT, BUT DOES NOT STATE WHICH SPECIFIC ACTIVITIES MUST BE UNDERTAKEN BY A COUNTY OR WHICH ENTITIES (E.G. GOVERNMENT,

PRIVATE, NON- PROFIT, CONTRACTOR) ARE TO CARRY THEM OUT. THESE DECISIONS ARE WITHIN EACH COUNTY'S DISCRETION.

DISCUSSION

IN 58 COMP.GEN. 19 (1978), THE OPINION REFERRED TO IN THE COUNTY'S DECEMBER 20 LETTER, WE DID NOT ADDRESS THE QUESTION OF WHETHER FUNDS RECEIVED BY STATE OR LOCAL GOVERNMENTAL UNITS UNDER THE PAYMENT LAWS SPECIFIED IN SECTION 6903(A) BECOME STATE OR LOCAL MONIES. RATHER, WE INTERPRETED "PAYMENTS RECEIVED BY" UNITS OF LOCAL GOVERNMENT FOR PURPOSES OF COMPUTING THE FORMULAE FOR PILT PAYMENTS UNDER 31 U.S.C. SEC. 6903(B)(1), AS FUNDS ACTUALLY RECEIVED AND AVAILABLE TO THE COUNTIES FOR OBLIGATION AND EXPENDITURE TO CARRY OUT THE COUNTIES' OWN RESPONSIBILITIES, THEREBY ALLEVIATING THE FISCAL BURDENS IMPOSED ON LOCAL GOVERNMENTAL UNITS BY THE PRESENCE OF TAX-EXEMPT FEDERAL LANDS WITHIN THEIR JURISDICTIONS. WE ACCORDINGLY CONCLUDED THAT CONGRESS DID NOT INTEND THAT PAYMENTS TO LOCAL GOVERNMENTS UNDER THE ACT BE REDUCED BY AMOUNTS WHICH, BY VIRTUE OF STATE LAW, MERELY PASS THROUGH THESE GOVERNMENTS ON THE WAY TO POLITICALLY AND FINANCIALLY INDEPENDENT SCHOOL OR SINGLE-PURPOSE DISTRICTS WHICH ARE ALONE RESPONSIBLE FOR PROVIDING THE SERVICES IN QUESTION. SUCH PAYMENTS ARE NOT MEANINGFULLY RECEIVED BY LOCAL GOVERNMENTS, WHICH WOULD BE ACTING SOLELY AS "CONDUITS" FOR THE FUNDS. THIS IS THE ONLY EXCEPTION TO THE DEDUCTION REQUIREMENT OF SECTION 6903(B) WHICH WE HAVE RECOGNIZED.

THE FACT THAT THE GEOTHERMAL STEAM ACT REVENUES WERE PAID INITIALLY TO THE STATE TO BE FURTHER DISBURSED IN ACCORDANCE WITH STATE LAW, DOES NOT TRANSFORM THESE FUNDS INTO STATE REVENUES, EXEMPT FROM THE DEDUCTION REQUIREMENTS OF SECTION 6903(B). THESE REVENUES ARE CONSIDERED TO BE PAID TO WHICHEVER UNIT IN THE STATE EVENTUALLY GETS TO USE THEM TO MEET ITS OWN RESPONSIBILITIES. IN THIS CASE, THE FUNDS WERE PASSED ON TO THE COUNTY, TO BE USED FOR THE PURPOSES ENUMERATED IN THE CALIFORNIA CODE. ALL THAT BLM DID IN DEDUCTING THE PAYMENTS RECEIVED BY THE COUNTY UNDER THE CODE, WAS TO ADJUST THE TOTAL PAYMENTS TO THE COUNTY FROM ALL THE FEDERALLY- SPECIFIED SOURCES TO ENSURE THAT THEY DID NOT TOTAL MORE THAN THE SECTION 6903(B)(1) FORMULA WOULD ALLOW.

THE COUNTY'S SECOND ARGUMENT IS THAT BECAUSE IT RECEIVED THE GEOTHERMAL FUNDS FROM THE STATE SUBJECT TO THE NON-DISCRETIONARY SPECIAL PURPOSES SET FORTH IN THE CODE, THE FUNDS SHOULD NOT HAVE BEEN DEDUCTED BY BLM FROM THE COUNTY'S PILT PAYMENTS. WE DISAGREE. THERE IS NOTHING IN THE LEGISLATIVE HISTORY OF PILT THAT DISTINGUISHES BETWEEN DISCRETIONARY AND NON- DISCRETIONARY FUNDS. AS LONG AS SECTION 6903(A) FUNDS ARE GIVEN TO A COUNTY TO CARRY OUT THE COUNTY'S OWN RESPONSIBILITIES, THEY ARE FUNDS SUBJECT TO THE DEDUCTION PROVISION OF THE PILT PAYMENT FORMULAE, EVEN THOUGH THE COUNTY MAY HAVE NO DISCRETION AS TO THE PROGRAMS FOR WHICH THEY MUST BE USED.

WE NOTE IN PASSING THAT THE COUNTY'S DISCRETION IS NOT IN FACT LIMITED AS IT SUGGESTS. THE CALIFORNIA CODE STATES CERTAIN BROAD PURPOSES FOR WHICH THE FUNDS ARE TO BE USED, BUT IS SILENT ON THE SUBJECT OF WHICH SPECIFIC COUNTY PROJECTS ARE TO BE SELECTED TO CARRY OUT THESE PURPOSES. ADDITION, THE CODE PROVIDES OPTIONAL ACTIVITIES FOR SATISFYING THE GENERAL STATUTORY REQUIREMENTS. AS A RESULT, THERE APPEARS TO BE A HIGH DEGREE OF AUTONOMY FOR THE COUNTY IN CONTROLLING AND USING THE FUNDS. THEY WERE RECEIVED UNDER A STATUTE INCLUDED IN SECTION 6903(A) AND THEIR DEDUCTION BY BLM FROM THE COUNTY'S PILT RECEIPTS FOR FISCAL YEARS 1982 AND 1983 UNDER THE FORMULAE IN SECTION 6903(B)(1) WAS IN FULL COMPLIANCE WITH THE ACT.

IN ANY EVENT, WE FIND THAT THE FUNDS TRANSFERRED TO LAKE COUNTY, CALIFORNIA, UNDER CODE SECTIONS 3820-3823, AND DERIVED FROM 30 U.S.C. SEC. 191, WERE INTENDED TO ALLEVIATE THE KIND OF COUNTY FUNDING PROBLEMS FOR WHICH PILT WAS ENACTED.